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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,001	06/24/2003	C. Paul Cox	P-137 / TEP0237-01	1629
832	7590	03/03/2006	EXAMINER	
BAKER & DANIELS LLP 111 E. WAYNE STREET SUITE 800 FORT WAYNE, IN 46802			FREAY, CHARLES GRANT	
			ART UNIT	PAPER NUMBER
			3746	

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/603,001

Applicant(s)

COX ET AL.

Examiner

Charles G. Freay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-16 is/are allowed.
- 6) ☒ Claim(s) 1,7,17-19 and 21 is/are rejected.
- 7) ☒ Claim(s) 2-6,8-12 and 20 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 10/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

Claim 21 and 8 are objected to because of the following informalities: claim 21 should end with a period and the examiner believes claim 8 should depend upon claim 7. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 7 and 17-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Ohashi et al (USPN 6,487,856).

Ohashi et al disclose in Figs. 7 and 8 an endcap for a hydrostatic pump comprising a housing (130) and a pair of system passages (131b), each system passage being connected to the hydrostatic pump (note the kidney openings at the center of the figures), and each system passage being fluidly connected to a pair of

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system ports (the openings at the opposite ends of the passages) in an exterior of the endcap housing. Further there are plugs (161) which close the ends of the passages.

Claims 1, 7, 17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Okada et al (USPN 5,473,964).

Okada et al disclose in Fig. 3 an endcap (3) for a hydrostatic pump comprising a housing and a pair of system passages (3a, 3b), each system passage being connected to the hydrostatic pump (note the kidney openings 3a' and 3b'), and each system passage being fluidly connected to a pair of system ports (the openings at the opposite ends of the passages) in an exterior of the endcap housing. Further there are plugs (clearly shown as threaded members) which close the ends of the passages.

Claims 1, 7 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Aoi et al (USPN 4,962,675).

Aoi et al disclose in Fig. 8 a housing (84) and an endcap (85) for a hydrostatic pump (piston device shown in fig. 7) and a pair of system passages (101,102), each system passage being connected to the hydrostatic pump (104-107), and each system passage being fluidly connected to a pair of system ports (the openings at the opposite ends of the passages) in an exterior of the endcap housing. Further there are plugs (103) which close the ends of the passages.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over either of Ohashi et al, Okada et al or Aoi et al.

As set forth above each of Okada et al. Ohashi et al or Aoi et al disclose the invention substantially as claimed. The references do not however discuss the use of case drains opposite each other on the housing. The examiner gives official notice that case drains are well known for hydrostatic pumps. At the time of the invention it would

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have been obvious to one of ordinary skill in the art to use a pair of such case drains in order to allow for easy maintenance of the device.

### ***Allowable Subject Matter***

Claims 13-16 are allowed.

Claims 2-6, 8-16 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

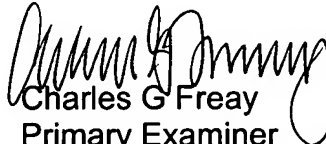
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ohashi et al (USPN 6,425,244) disclose a hydrostatic pump, note Fig. 7 especially.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Thorpe can be reached on 571-272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Charles G Freay  
Primary Examiner  
Art Unit 3746

CGF  
March 1, 2006